

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, §
§
Plaintiff, § § Criminal No. 3:94-CR-042-D
VS. §
§
DERRICK DAMON RAINWATER, § §
§
Defendant. §

MEMORANDUM OPINION AND ORDER

Defendant Derrick Damon Rainwater’s (“Rainwater’s”) November 27, 2019 letter to the court, treated as a motion to reduce sentence, is denied because § 403 of the First Step Act of 2018 does not provide retroactive relief.

Rainwater “was convicted of six counts of robbery and aiding and abetting, in violation of 18 U.S.C. § 2 and 18 U.S.C. § 1951 (the Hobbs Act) [Counts 1, 3, 4, 6, 8, and 10], and of five counts of using a firearm during a crime of violence (COV) and aiding and abetting, in violation of 18 U.S.C. § 924(c)(1) [Counts 2, 5, 7, 9, and 11].” *Rainwater v. McConnell*, 803 Fed. Appx. 802, 802 (5th Cir. 2020) (per curiam). The court imposed Rainwater’s sentence on August 12, 1994, and he is currently serving a total term of imprisonment of 1,117 months: 97 months for the six Hobbs Act convictions; a consecutive term of 60 months for the first Section 924(c)(1) conviction; and four consecutive 240-month terms for the four subsequent Section 924(c)(1) convictions. See Dkt. No. 198 (corrected amended judgment entered Mar. 19, 2008); see also *United States v. Rainwater*, 267 Fed. Appx. 343, 344 (5th Cir. 2008) (per curiam) (“The version of 18 U.S.C. § 924(c)(1) in effect at the [time] of Rainwater’s conviction mandated consecutive 240-month sentences on each of [the subsequent Section 924(c)] counts” — Counts 5, 7, 9, and

11.).

In his November 27, 2019 letter, Rainwater moves under § 403 of the First Step Act of 2018 for reconsideration of the sentences imposed on his consecutive § 924(c) convictions.

The First Step Act

was signed into law on December 21, 2018, “introducing a number of criminal justice reforms.” Among those reforms, § 403 of the Act amended 18 U.S.C. § 924(c)(1)(C)(i), the provision that imposes a 25-year minimum sentence for repeat firearms offenders, to reduce the severity of “stacked” charges. Before the Act, the 25-year minimum was triggered by any “second or subsequent conviction under this subsection.” Now, it is triggered only by a repeat “violation . . . that occurs after a prior conviction under this subsection has become final.” In other words, the 25-year repeat-offender minimum no longer applies where a defendant is charged simultaneously with multiple § 924(c)(1) offenses. Now, to trigger the 25-year minimum, the defendant must have been convicted of a § 924(c)(1) offense in a prior, separate prosecution.

United States v. Gomez, 960 F.3d 173, 176-77 (5th Cir. 2020) (footnotes omitted).

The Fifth Circuit’s decision in *Gomez* forecloses the relief Rainwater now seeks. As the Fifth Circuit held, the First Step Act “itself plainly states that § 403 is not retroactive: It applies to an offense committed before its December 21, 2018 effective date only ‘if a sentence for the offense ha[d] not been imposed as of such date.’” *Id.* at 177 (footnote omitted); *see also United States v. Davis*, ___ U.S. ___, 139 S. Ct. 2319, 2324 n.1 (2019) (“In 2018, Congress changed the law so that, *going forward*, only a second § 924(c) violation committed ‘after a prior [§ 924(c)] conviction . . . has become final’ will trigger the 25-year minimum.” (citation omitted; emphasis added)); *United States v. Ross*, 2020 WL 3977113, at *3 (N.D. Tex. July 14, 2020) (Boyle, J.) (“Because the First Step Act was enacted in 2018, and Ross was sentenced in 2010, § 403 does not affect his sentence.” (citation omitted)).

* * *

Accordingly, because the relief Rainwater seeks is not available to him under§ 403 of the First Step Act of 2018, his motion is denied.

SO ORDERED.

August 12, 2020.



SIDNEY A. FITZWATER
SENIOR JUDGE